D.B. CIVIL SPECIAL APPEAL(W)NO.1323/2006

State of Rajasthan
Vs.
Vikram Singh & Ors.

DATE OF ORDER :: 09-03-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri H.V. Nandwana, for the appellant.

The condonation application has been put up for consideration but we prima facie looked into merit of the case so that condonation may not be a futile exercise, and accordingly heard the counsel.

This appeal is directed against the order of the learned Single Judge allowing the writ petition of the respondent. Appellant had challenged the appointment of respondent no.2, Amar Singh Rajawat, as Special Public Prosecutor to conduct trial in Sessions Case no.35/2003. The ground of challenge was that he happened to be counsel for the complainant, and therefore he was not expected to act fairly as Public Prosecutor. Relying the decision of the Supreme Court in Shiv Kumar Vs. Hukam Chand, (1999) 7 SCC 467, the learned Single Judge quashed his appointment.

Counsel for the appellant placed reliance on order of this Court in the case of Nemi Chand Vs. State of Rajasthan, D.B. Civil Special Appeal(w)no.437/2003. We are of the view that facts of the case were different. However, we do not wish to go into the propriety or legality of the appointment of respondent no.2 as Special Public Prosecutor. The case, as mentioned above, was of the year 2003 and the appointment was made on 16.7.2004. The trial of the case must have been over or nearing completion. Even if the trial is not over, any interference at this stage will only prolong the proceedings. We are thus not inclined to interfere with the order of the learned Single Judge.

Hence, no useful purpose would be served by condoning the delay. The appeal is dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen